

**ERIE COUNTY CLERKS OFFICE****County Clerk's Recording Page**

Book: 11174 Page: 5820

Return To:

SUBSEA OIL & GAS INC  
2330 Bowen Rd  
Box 102  
Elma NY 14059-9459

Page Count: 4

Doc Type: **OIL&GAS LEASE <500**Rec Date: **12/09/2009**Rec Time: **04:34:29 PM**Control #: **2009247986**User ID: **lld**Trans Num: **818590**DEED SEQ: **TT2009009051**

MTG SEQ:

UCC:

SCAR:

INDEX:

Party 1:

**KOSTANCIAK JEROME**

Party 2:

**SUBSEA OIL&GAS INC****Recording Fees:**

RECORDING	\$40.00
COE CO \$1 RET	1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
TP584	\$10.00

**Consideration Amount:****\$1.00**

BASIC	\$0.00
SONYMA	\$0.00
ADDL	\$0.00
NFTA MT	\$0.00
TRANSFER	\$0.00
NFTA TT	\$0.00

---

**Total: \$70.00**

STATE OF NEW YORK  
ERIE COUNTY CLERK'S OFFICE

**WARNING - THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT,  
REQUIRED BY SECTIONS 319&316-a (5) OF THE REAL PROPERTY LAW  
OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.**

Kathleen C. Hochul  
County Clerk

# OIL AND GAS LEASE

## Agreement

Made and entered into the 17TH day of NOVEMBER, 2009

A.D., by and between

Jerome Kostanciak, 12722 Stage Road, Akron, New York 14001

County of ERIE and State of New York, party of the first part, hereinafter called the Lessor, and

**Subsea Oil & Gas Inc., P.O. Box 102, Elma, New York 14059**

party of the second part, hereinafter called the Lessee, WITNESSETH:

1. That Lessor, for and in consideration of the sum of One Dollar (\$1.00) in hand paid, and of the covenants and agreements hereinafter contained to be performed by Lessee, has this day granted and leased and hereby grants and conveys unto Lessee all the oil and gas under the following described land, and leases and lets unto Lessee for the purpose and with the exclusive right to explore and operate for and produce oil and gas, lay and maintain pipelines, build tanks and roads, store oil, store gas underground and remove same, and build other structures thereon necessary to produce, save and store all such substances.

All of that certain tract of land situated in the Township of Newstead, County of Erie State of New York Tax Map No(s): SBL: 61.00-4-8.1 and bounded substantially, formerly or currently, by the following lands:

North JUREK (SBL: 61.00-4-8.2)

East S NEWSTEAD RD

South STAGE RD

West C KELKENBERG (SBL: 60-3-23)

containing .45.45 acres, more or less. In addition to the above described land, any and all strings or parcels of land adjoining or contiguous to the above described land and owned or claimed by Lessor are hereby leased to Lessee.

Lessee shall be responsible for any damage to growing crops, fences and buildings which may result from said operations. No well shall be drilled within 200 feet of any house or barn now on said premises. Lessor agrees that Lessee may enter upon leased premises, search for and clean out any abandoned oil or gas well and such well shall then be considered to have been drilled under the terms of this lease. The same may be properly plugged and abandoned again or refitted and utilized by Lessee for the production or storage of gas or oil. Lessee shall have the right to use free of cost, gas, oil, and water found on said land (except from Lessor's wells) necessary for the operations described herein.

2. Lessor hereby covenants that he is seized of an indefeasible fee simple estates in the land hereinbefore described, subject to existing easements, together with all the gas underlying the same, and that he will forever warrant and defend the leasehold estate hereby demised unto the Lessee against the lawful claims and demands of all whomsoever, and that Lessee shall have the exclusive, full, free and quiet possession of said described premises for the purposes and during the terms herein set forth, further agrees that the Lessee at its option may pay and discharge, any taxes, mortgages or other liens existing, levied or assessed on or against the described lands, and in the event it exercises such option, it shall be subrogated to the rights of any holders thereof and may reimburse itself by applying discharge of any such mortgage, tax or other item, any royalty or rental accruing hereunder.

3. It is agreed that this lease shall remain in force for the term of ten years from the above date and as long thereafter as the above described land, or any portion thereof, or any other land pooled or unitized therewith as provided in paragraph 4 hereof, is operated by the Lessee in the search for or production of oil or gas, or as long as gas is being stored, held in storage, or withdrawn from the premises by Lessee, or as long as this lease is extended by any other provision contained herein. It is agreed that the cessation of production from wells on the leased premises or upon other lands unitized therewith, after the expiration of the original term, shall not terminate this lease whether the pooling units have been dissolved or not, if the land is used for the storage of gas prior to the plugging and abandonment of wells from which oil or gas has been produced. A well need not be drilled on the premises to permit the storage of gas.

4. Lessee is hereby granted the right to pool and unitize any stratum or strata under all or any part of the land described above with any other lease or leases, land or lands, mineral estates, or any of them, whether owned by the Lessee or others, so as to create one or more drilling or production units. Such drilling or production units shall not exceed 640 acres in extent if gas or condensate is produced and 40 acres if oil is produced and shall conform to the rules and regulations of any lawful governmental authority having jurisdiction in the premises, and with good drilling or production practice in the area in which the land is located. In the event of the unitization of the whole or any part of the land covered by this lease, Lessee shall before or after the completion of a well, record a copy of its unit operation designation in the County wherein the leased premises are located, and mail a copy thereof to the Lessor. In order to give effect to the known limits of the oil and gas pool, as such limits may be determined from available geological or scientific information or drilling operations. Lessee may at any time increase or decrease that portion of the acreage covered by this lease which is included in any drilling or production unit, or exclude it altogether, provided that written notice thereof shall be given to Lessor promptly. As to each drilling or production unit designated by the Lessee, the Lessor agrees to accept and shall receive out of the production or the proceeds from the production from such unit, such proportion of the royalties specified herein, as the number of acres out of the lands covered by this lease which may be included from time to time in any such unit, bears to the total number of acres included in such unit. The commencement drilling, completion of or production from a well, whether drilled before or after unitization, on any portion of the unit created under the terms of this paragraph shall have the same effect upon the terms of this lease as if a well were commenced, drilled, completed or producing on the land described herein.

5. In consideration of the premises the Lessee covenants and agrees to pay the following royalties:  
(OIL): To deliver to the credit of the Lessor, his heirs or assigns, free of cost, in pipeline to which Lessee may connect its wells, a royalty of the equal one eighth (1/8) part of all oil produced and saved from the leased premises. Lessee at its option may pay to the Lessor for such one eighth royalty the market price for oil of like grade and gravity prevailing on the day such oil is run into the pipeline, or into storage tank.

(GAS): To make the following payments of royalty for or on account of wells producing gas from subsurface strata not utilized for the storage of gas, namely: To pay a royalty equal to one eighth (1/8) of the value of all gas (except storage gas) produced, saved and marketed, calculated at the price paid at the connecting point by the pipeline operator.

The time and method of marketing production from any well on the leased premises and the amount thereof that shall be used or marketed within any period of time shall be entirely within the discretion of the Lessee, and this lease shall not lapse pending the marketing or during any interruption of marketing of such production.

If operations for drilling are not commenced on said land, or on acreage pooled therewith as herein provided, on or before 6 months from this date, the lease shall terminate as to both parties, unless on or before such date Lessee shall pay or tender to Lessor, or to the credit of Lessor, a delay rental at the rate of 5.00 per acre per 12 months, in advance, beginning 6 months from this date which shall cover the privilege of deferring commencement of drilling operations may be further deferred for successive periods of 12 months. In like manner and upon like payments or tenders the commencement of drilling operations may be further deferred for successive periods of 12 months each during the primary term or until a well yielding royalty to the Lessor is drilled.

As full compensation for the storage rights herein granted, and in lieu of all royalty or other payments due or to become due for the right to produce or the production of gas, oil or other hydrocarbon substance produced therewith from the stratum or strata utilized for gas storage purposes, Lessee agrees to pay Lessor an annual rental of Two Dollars (\$2.00) per acre for each acre utilized for such gas storage purposes, in advance, commencing with the date it notifies Lessor that it elects to use any stratum for storage purposes, and for so long thereafter as any such stratum is so utilized. Lessee further agrees to pay Lessor, as liquidated damages for the drilling, operation and maintenance of each well on leased premises which is utilized for storage of gas, as well as for the necessary or useful surface rights and privileges relating thereto, for the entire term of this agreement, the sum of One Hundred Dollars (\$100.00) payable in one sum within three months after each well now existing or hereafter drilled upon leased premises is so utilized. The storage rights may be exercised in conjunction with other leases in the general vicinity.

Lessor shall have gas free of charge for owner occupied principal dwelling house up to 200,000 cubic feet per year from any well on leased premises producing gas by giving prior notice and by making his own connections using standard regulators and meters to the well. The use of said gas is to be at Lessor's sole risk and expense.

6. All payments hereunder may be made direct to Lessor or deposited to his credit, or the credit of his respective heirs or assigns in N/ A (Bank) of Jerome Kostanciak and mailed to 12722 Stage Road, Akron, New York 14001

Lessee must be notified in writing of any change in title or ownership or in the party to whom, or place where, payments of money are to be made. Failure to pay or error in paying any rental or other payment due hereunder shall not constitute a ground for forfeiture of this lease and shall not affect Lessee's obligation to make such payment, but Lessee shall not be considered in default on amount thereof until Lessor has first given Lessee written notice of the non-payment and Lessee shall have failed for a period of ninety days after receipt of such notice to make payment. Lessor shall be responsible to sign subordination or other such letters as required by banks or other lending institutions.

7. If at the expiration of the primary term hereof, there is no production of oil or gas on the leased lands, but Lessee is engaged in operations for drilling, reworking, plugging back, or deepening a well thereon, this lease shall remain in force and its term shall continue for so long as such operations, or additional drilling, reworking, plugging back, or deepening operations commenced while such operations are in progress or within thirty days after the cessation thereof, are prosecuted, and if production results therefrom, then until it is marketed and so long as production continues. If, after the expiration of the primary term of this lease, production on the leased premises shall cease, this lease shall not terminate, provided that Lessee commences operations for drilling, reworking, plugging back, or deepening a well within 60 days from such cessation and this lease shall remain in force during the prosecution of such operations or additional drilling, reworking, plugging back, or deepening operations commenced while such operations are in progress or within 30 days after the cessation thereof, and, if production results therefrom, then until it is marketed and so long as production continues. At the expiration of this primary term of the lease, Lessee may continue to use the pipeline rights granted herein upon payment of Two Dollars (\$2.00) per rod to Lessor for right of way for the same.

8. Lessee, at any time, and from time to time, may surrender this lease as to all or any part or parts of leased premises by tendering an appropriate instrument of surrender to the Lessor, and thereupon this lease, and the rights and obligations of the parties hereunder, shall terminate as to the part or parts so surrendered. Upon each surrender as to any parts of leased premises the rental specified above shall be proportionately reduced on an acreage basis, and Lessee shall have reasonable easements for then existing pipelines or roadways on the lands surrendered for the purpose of continuing operations on the lands retained. Lessee shall have the right at any time during or after the expiration of this lease to remove all machinery, fixtures, buildings or other structures placed on said premises, including the right to pull and remove all casing.

9. Said Lessee shall not be required in any event to increase the delay rental, storage rental, or the gas or oil royalty payments hereunder by reason of any royalty or interest in said oil or gas that may have been heretofore sold, resolved or conveyed by said Lessor or by his predecessors in titles or otherwise; and if the Lessor does not have title to all the oil and gas in the leased premises or to the storage rights herein leased, there shall be refunded such part of all payments made by the Lessee hereunder as shall be proportionate to the outstanding title, and all payments and royalties thereafter to be made shall be reduced in the same proportion.

10. In case of notice of, or an adverse claim to the premises, affecting all or any part of the rentals, storage rentals or royalties, Lessee may withhold payments or delivery of the same until their ownership is determined by compromise, or by final decree of a court of competent jurisdiction, and to this end Lessee may file a petition for Interpleader.

11. All terms, conditions, limitations and covenants between the parties hereto shall extend to their respective heirs, successors, personal representatives and assigns.

This lease shall not be terminated, in whole or in part, nor shall Lessee be held liable for damage for failure to comply with the express or implied covenants hereof, if compliance therewith is prevented by, or if such failure is the result of interference by an act of God, strikes, riots, war, court actions, any Federal or State laws, executive orders, rulers, or regulations, whether valid or invalid, and similar factors beyond Lessee's control. During any period for ninety (90) days thereafter that Lessee is unable to comply with the obligation herein or drill, produce and market any products from the leased premises by reason of any of the above recited causes, this lease shall remain in full force and effect; however, Lessee will resume paying delay rentals on the first anniversary of this lease occurring ninety (90) days after initial interference from one of the above causes.

12. If this lease is terminated, forfeited or cancelled, then the Lessee shall, or if this lease is assigned, then the Assignee shall give Notice of Record. First payment due under this lease will occur not more than 180 days from effective date of lease for rental obligations unless other provisions apply.

SEE ADDENDUM ATTACHED HERETO AND MADE A PART HEREOF.

IN WITNESS WHEREOF the parties to this agreement have hereunto set their hands and seals the day and year first above written.

WITNESS

Walter P. Haker

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Jerome Kostanciak  
Jerome Kostanciak

SUBSEA OIL & GAS INC.

By:

Walter P. Haker  
Walter P. Haker

ACKNOWLEDGEMENT IN NEW YORK STATE (RPL 309-a)

State of New York )  
County of Erie ) ss.:  
Erie

On November 17, 2009 before me, the undersigned, personally appeared Walter P. Haker personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

My commission expires 6/30/2011

Commission Number \_\_\_\_\_

Signature: Antoinette Walcott

Office: \_\_\_\_\_

ACKNOWLEDGEMENT IN NEW YORK STATE (RPL 309-a)

State of New York )  
County of Que ) ss.:  
Que

On November 17, 2009 before me, the undersigned, personally appeared Wayne Haker the subscribing witness(es) to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) at 11413 Sweetestown Ct, Marsh NY 14102 (full address); that he/she/they know(s) Jerome Kostanciak to be the individual(s) described in and who executed the foregoing instrument; that said subscribing witness(es) was (were) present and saw said Jerome execute the same; and that said witness(es) at the same time subscribed his/her/their name(s) as a witness(es).

My commission expires 6/30/2011

Commission Number \_\_\_\_\_

Signature: Antoinette Walcott

Office: \_\_\_\_\_

Antoinette Walcott  
Notary Public New York State  
Qualified in Erie County  
Commission Expires June 30, 2011

ADDENDUM

between  
Jerome Kostanciak, as Lessor  
and  
Subsea Oil & Gas Inc., as Lessee  
dated the 17 day of NOV, 20 09

IF THIS LEASE BECOMES FORFEITED, TERMINATED, OR EXPIRES, THE LESSEE, OR IF THE LEASE HAS BEEN ASSIGNED, THE ASSIGNEE IS REQUIRED TO PROVIDE A DOCUMENT CANCELING THE LEASE AS OF RECORD, AT NO COST TO THE CURRENT LANDOWNER. IF THE LESSEE OR ASSIGNEE FAILS TO CANCEL THE LEASE, THE CURRENT LANDOWNER MAY COMPEL A CANCELLATION PURSUANT TO SECTION 15-304 OF THE GENERAL OBLIGATIONS LAW.

NOTICE TO LESSOR:

THIS IS A LEASE OF OIL AND GAS RIGHTS, NOT A SALE, CONTAINING TERMS THAT MAY BE NEGOTIATED BY YOU. YOU HAVE THE RIGHT TO CANCEL THIS LEASE WITHIN THREE BUSINESS DAYS AFTER EXECUTION OF THE LEASE BY NOTIFYING THE LESSEE THAT YOU HAVE CANCELED THIS CONTRACT. IN ORDER TO CANCEL THIS LEASE, YOU MUST EXECUTE A NOTICE OF CANCELLATION IN THE FORM PROVIDED BELOW, MAIL IT TO THE LESSEE AND REFUND ALL AMOUNTS PAID TO YOU BY THE LESSEE WITHIN THE THREE-DAY CANCELLATION PERIOD. THE MAILING MUST BE POSTMARKED WITHIN THE THREE-DAY CANCELLATION PERIOD TO BE EFFECTIVE.

NOTICE OF CANCELLATION

\_\_\_\_\_, I/ WE HEREBY CANCEL THIS LEASE.

DATED: \_\_\_\_\_

SIGNATURE(S): \_\_\_\_\_

THE PERSON PRESENTING THIS LEASE TO YOU IS ( ☒ ) NOT ( ☐ ) A MEMBER OF NALA (Northern Appalachian Landman's Association) AND THEREFORE IS ( ☒ ) IS NOT ( ☐ ) SUBJECT TO A CODE OF CONDUCT. IF THE PERSON PRESENTING THIS LEASE TO YOU IS SUBJECT TO A CODE OF CONDUCT, A COPY OF THE CODE OF CONDUCT MUST BE PRESENTED TO YOU WITH THIS LEASE. IF APPLICABLE, THE CODE OF CONDUCT PROVIDES A DISPUTE RESOLUTION MECHANISM FOR ANY DISPUTE THAT YOU MAY HAVE REGARDING THE MANNER BY WHICH THIS LEASE WAS PRESENTED TO YOU. IF YOU HAVE ANY SUCH DISPUTE, YOU MAY INVOKE THE DISPUTE RESOLUTION MECHANISM OF THE CODE OF CONDUCT BY CONTACTING THE PERSON OR PERSONS DESIGNATED IN THE CODE OF CONDUCT. THE FAILURE OF THE LESSEE TO PAY ANY ROYALTIES TO YOU AS REQUIRED UNDER THE TERMS OF THE LEASE FOR A PERIOD OF FOUR CONSECUTIVE MONTHS OR MORE SHALL BE A DEFAULT UNLESS OTHERWISE PROVIDED BY LAW, AND WILL RESULT IN CANCELLATION OF THE LEASE APPLICABLE TO THE TARGET FORMATION OF THE WELL WITHIN THE SPACING UNIT, FOLLOWING WRITTEN NOTIFICATION TO THE LESSEE OF YOUR INTENT TO CANCEL AND SIXTY DAYS FOR THE LESSEE TO CURE THE DEFAULT. IF THE LESSEE HAS A BONA FIDE DISPUTE REGARDING THE GROUNDS FOR CANCELLATION, SUCH DISPUTE AND THE REASONS THEREFOR MUST BE PROVIDED TO YOU IN WRITING OR THE DEFAULT MUST BE CURED WITHIN SUCH SIXTY DAY PERIOD, OTHERWISE THE LEASE SHALL BE CANCELLED.

MAIL TO:\*\*\*

Oil and Gas Lease No. \_\_\_\_\_  
Oil and Gas Lease  
from  
Jerome Kostanciak  
12722 Stage Road, Akron, New York 14001  
to  
\*\*\* Subsea Oil & Gas Inc.  
P.O. Box 102  
Elma, New York 14059  
Dated NOVEMBER 17, 2009  
Term Ten (10) Year  
Acres 45.45  
Township Newstead  
County Erie  
State New York  
\_\_\_\_\_  
County Clerk's Record